S.B.Civil Revision Petition No.1429/1999

Gopal Ram.
vs.
Legal representatives of Nathuram Suthar.

Date : 10.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhaiya, for the petitioner.
Mr. RR Nagori, for the respondents.

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Notice of respondents no.3/3/1 to 3/3/4 have not been served who have been shown as proforma respondents in the revision petition, therefore, service of notice of proforma respondents no.3/3/1 to 3/3/4 is dispensed with.

At the request of learned counsel for the parties, this revision petition is finally heard and decided.

This revision petition is against the order dated 6.9.1999 passed by the executing court in the execution petition. The final decree was passed on 27.2.1998 and an appeal was pending against the preliminary decree before this Court as S.B. Civil First Appeal No.144/1997. In the said first appeal, the parties compromised and the decree was modified in pursuance of this Court's order dated 12.1.1998. A Commissioner was appointed and portions were demarcated, shares were defined and, therefore, decree was

sought to be executed by the plaintiff. During partition by meets and bounds, a dispute arose with regard to a shutter, which according to the present petitioner, was fixed in the share which was allotted to the petitioner whereas according to the respondent – decree holder, shutter was fixed by the respondent after filing of the suit on 18.10.1989. The Commissioner went on spot and removed the disputed shutter and handed over to the plaintiff on supardginama. Present petitioner raised objection and submitted that since the shutter was fixed in the portion which came in the petitioner's share, therefore, the shutter could not have been delivered to the plaintiff. It appears that in the execution proceedings itself, both the parties led evidence and the executing court after considering the Commissioner's report, final decree and the evidence produced by both the parties reached to the conclusion that the shutter belongs to the plaintiff and it was rightly handed over to the plaintiff. The order of the executing court dated 6.9.1999 is under challenge in this revision petition.

According to learned counsel for the petitioner, the executing court exceeded its jurisdiction and passed the order of declaration of title of shutter in favour of the plaintiff. It is submitted that the order on the face of it is wholly without jurisdiction and further the executing court committed serious error of fact in declaring the shutter to be of the plaintiff.

Learned counsel for the respondent submitted that in fact during effecting partition by meets and bounds, the doors which were in the portion which fell in the share of the plaintiff were removed and handed over to the petitioner and the shutter which was fixed by the plaintiff was handed over to the plaintiff. It is submitted that the court below has considered the evidence produced by both the parties and thereafter passed a consequential order in relation to the subject matter involved in the suit and which was subject matter of the decree itself. It is also submitted that since justice has been done by the court below and there is no failure of justice because of the order dated 6.9.1999 and in case, the order is set aside, it will result into failure of justice, therefore, this Court may not interfere in the revisional jurisdiction.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It is true that the suit was for partition and decree was passed for partition of immovable property, shares were demarcated and the Commissioner was appointed to effect the partition. The plaintiff claimed that the shutter in question belongs to him and the Commissioner who went on the spot also took key of the Shutter from the plaintiff and after removing the shutter, handed over to the plaintiff on supardginama. The fixtures like door or shutter attached with the property may become part of the immovable property and for those items, the party need not

to mention the facts in the suit itself unless there are reasons for mentioning or claiming rights over those articles situated and fixed over the immovable properties.

In the present case, if the contention of the respondent is true that the wooden doors which were fixed in the share which came in his share were removed and handed over to one of the party – petitioner and the shutter which was fixed in the petitioner's portion was handed over to the respondent and the executing court after appreciation of evidence held that the shutter belongs to the respondent, then this Court is not inclined to reassess all the evidence in such a matter where some of the wooden doors have been handed to one party and shutter to another party. The contention of the petitioner that the executing court exceeded jurisdiction is having no legal foundation because of the reason that all the fixtures are also subject matter in the suit being part and parcel of the suit property.

In view of the above discussion, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya